

REMARKS

Claim 32 has been cancelled without prejudice or disclaimer, claims 20, 33, and 35 have been amended, and new claims 44 and 45 have been added. The fee of \$25.00 for the one (1) extra claim is included herewith.

Applicant respectfully requests further examination and reconsideration of claims 20-31 and 33-45, now pending in the application.

The last Office Action mailed from the Patent Office on January 26, 2005 has been carefully considered and indicates that:

- a) Claim 35 is objected to;
- b) Claims 20-43 are rejected under 35 U.S.C. § 112, *first paragraph*, as failing to comply with the written description requirement;
- b) Claims 22 and 38 are rejected under 35 U.S.C. § 112, *second paragraph*, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention;
- c) Claims 20, 22, 23, 26-31, 36, 37, 41, and 43 are rejected under 35 U.S.C. § 102(b) as being anticipated by Pardee;

- d) Claims 20, 21, 24, 38, and 39 are rejected under 35 U.S.C. § 102(e) as being anticipated by Kitao;
- e) Claims 20, 21, 24, 38, 39, and 42 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Boyd in view of Benoit; and
- f) Claims 25, 32-35, and 40 are objected to as being dependent upon a rejected base claim but would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112, *second paragraph*, and to include all of the limitations of the base claim and any intervening claims.

In response to the Examiner's objection to claim 35, applicant has amended claim 35, line 2, to change "**blocks**" to **--members--** so as to make claim 35 consistent with that which is disclosed in the specification, as required by the Examiner.

In view of the amendment made *supra* to claim 35, line 2, to change "**blocks**" to **--members--** so as to make claim 35 consistent with that which is disclosed in the specification, applicant respectfully submits that the Examiner's grounds for the objection to claim 35 are no longer applicable and applicant therefore respectfully requests that the Examiner withdraw this objection.

In response to the Examiner's rejection of claims 20-43 under 35 U.S.C. § 112, *first paragraph*, as failing to comply with the written description requirement, applicant has amended claim 20 to delete **"wherein said bottom is formed by connecting to each other said bottom part of said front face, said bottom part of said back face, and said bottom part of each gusset, without any overlapping with each other of said bottom part of said front face, said bottom part of said back face, and said bottom part of each gusset"**, as required by the Examiner.

In view of the amendment made *supra* to claim 20 to delete **"wherein said bottom is formed by connecting to each other said bottom part of said front face, said bottom part of said back face, and said bottom part of each gusset, without any overlapping with each other of said bottom part of said front face, said bottom part of said back face, and said bottom part of each gusset"**, applicant respectfully submits that the Examiner's grounds for the rejection of claims 20-43 under 35 U.S.C. § 112, *first paragraph*, as failing to comply with the written description requirement are no longer applicable and applicant therefore respectfully requests that the Examiner withdraw this rejection.

In response to the Examiner's rejection of claims 22 and 38 under 35 U.S.C. § 112, *second paragraph*, as being indefinite for failing to particularly point out and

distinctly claim the subject matter which applicant regards as the invention, applicant respectfully submits that:

1. Regarding claim 22, the Courts have held that there is nothing wrong in claiming something by what it does as opposed to what it is, as was decided in *In re Swinehart and Sfiligoj*, 169 USPQ 226, where the Court of Customs and Patent Appeals held:

"We take the characterization "functional"...to indicate nothing more than the fact that an attempt is being made to define something...by what it *does* rather than by what it is....In our view, there is nothing intrinsically wrong with the use of such a technique in drafting patent claims."[at 228][Emphasis added]

And, as was upheld in *In re Echerd and Watters*, 176 USPQ 321 (CCPA 1973), where the Court held:

"There is nothing inherently wrong in defining something *by what it does rather than what it is.*"[at 322][Emphasis added]

2. Regarding claim 38, applicant has amended claim 20 to delete **"wherein said bottom is formed by connecting to each other said bottom part of**

said front face, said bottom part of said back face, and said bottom part of each gusset, without any overlapping with each other of said bottom part of said front face, said bottom part of said back face, and said bottom part of each gusset” so as to make claim 38 not inconsistent with the language of claim 20, as required by the Examiner.

In view of the arguments presented *supra* and the amendment made *supra* to claim 20 to delete **“wherein said bottom is formed by connecting to each other said bottom part of said front face, said bottom part of said back face, and said bottom part of each gusset, without any overlapping with each other of said bottom part of said front face, said bottom part of said back face, and said bottom part of each gusset”** so as to make claim 38 not inconsistent with the language of claim 20, applicant respectfully submits that the Examiner’s grounds for the rejection of claims 22 and 38 under 35 U.S.C. § 112, *second paragraph*, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention are no longer applicable and applicant therefore respectfully requests that the Examiner withdraw this rejection.

In response to the Examiner’s rejection of claims 20, 22, 23, 26-31, 36, 37, 41, and 43 under 35 U.S.C. § 102(b) as being anticipated by Pardee, the Examiner’s rejection of claims 20, 21, 24, 38, and 39 under 35 U.S.C. § 102(e) as being anticipated by Kitao, the Examiner’s rejection of claims 20, 21, 24, 38, 39, and 42

under 35 U.S.C. § 103(a) as being unpatentable over Boyd in view of Benoit, and the Examiner's objection to claims 25, 32-35, and 40 as being dependent upon a rejected base claim but would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112, *second paragraph*, and to include all of the limitations of the base claim and any intervening claims, applicant:

1. Expresses her sincere appreciation for the Examiner's gracious allowance of the subject matter of claims 25, 32-35, and 40.
2. Cancelled allowable claim 32.
3. Amended base claim 20 to include the limitations of cancelled allowable claim 32.
4. Amended claim 33 to reflect proper dependency.
5. Added new claim 44 to include the limitations of base claim 20 and allowable claim 40.
6. Added new claim 45 to include the limitations of base claim 20, part of claim 21, and allowable claim 25.

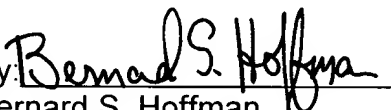
In view of the cancellation of allowable claim 32, the amendment made *supra* to base claim 20 to include the limitations of cancelled allowable claim 32, the amendment made *supra* to claim 33 to reflect proper dependency, the addition of new claim 44 to include the limitations of base claim 20 and allowable claim 40, and the addition of new claim 45 to include the limitations of base claim 20, part of claim

21, and allowable claim 25, applicant respectfully submits that the Examiner's grounds for the rejection of claims 20, 22, 23, 26-31, 36, 37, 41, and 43 under 35 U.S.C. § 102(b) as being anticipated by Pardee, the Examiner's grounds for the rejection of claims 20, 21, 24, 38, and 39 under 35 U.S.C. § 102(e) as being anticipated by Kitao, the Examiner's grounds for the rejection of claims 20, 21, 24, 38, 39, and 42 under 35 U.S.C. § 103(a) as being unpatentable over Boyd in view of Benoit, and the Examiner's grounds for the objection to claims 25, 32-35, and 40 are no longer applicable and applicant therefore respectfully requests that the Examiner withdraw these rejections and this objection.

In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of the rejections and objection are again earnestly solicited. Allowance of claims 20-31 and 33-45 at an early date is earnestly solicited.

Respectfully,

Dated: 2-19-05

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